



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

SEP 27 2005

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

Paul Crookall, Production Manager  
Remelt Services, Inc.  
6560 Juniata Avenue  
Cleveland, OH 44103

REPLY TO THE ATTENTION OF

Re: In the Matter of Remelt Services  
Incorporated  
CAA Docket No. CAA-05- 2005 0052

Dear Mr. Crookall:

I have enclosed a complaint filed against Remelt Services Incorporated (RSI), under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d). The complaint alleges violations of Section 112 of the Clean Air Act, 42 U.S.C. § 7412, and the regulations at 40 C.F.R. Part 63, Subpart RRR. The complaint and proposed penalty are based upon the best available information at this time. We may adjust the proposed penalty if RSI establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

As provided in the complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact, Mark Palermo, Associate Regional Counsel (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 886-6082.

Sincerely,

Stephen Rothblatt, Director  
Air and Radiation Division

Enclosures

cc: George Baker, Cleveland Local Air Agency

ARD  
EDMS

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

Remelt Services, Incorporated  
Cleveland, Ohio

**Respondent.**

) Docket No. **CAA-05- 2005 0052**  
)  
)  
) **Proceeding to Assess a Civil**  
) **Penalty under Section 113(d)**  
) **of the Clean Air Act,**  
) **42 U.S.C. § 7413(d)**  
)  
)

**Administrative Complaint**

1. This is an administrative proceeding assessing a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Remelt Services, Incorporated, (RSI) a company doing business in Ohio.

**Statutory and Regulatory Background**

4. Under Section 112 of the Act, the Administrator of U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Aluminum Production at 40 C.F.R. §§ 63.1500 through 63.1519.

5. The NESHAP for Secondary Aluminum Production, at 40 C.F.R. Subpart RRR, applies to the owner or operator of each secondary aluminum production facility as defined at 40 C.F.R. § 63.1503.

6. The NESHAP at 40 C.F.R. § 63.1500(c) states that the

Subpart RRR requirements pertaining to dioxin and furan emissions and associated operating, monitoring, reporting and recordkeeping requirements apply to certain affected sources located at a secondary aluminum production facility that is an area source of Hazardous Air Pollutants (HAP). Among the affected sources covered by the dioxin/furan Subpart RRR requirements are all new and existing "sweat furnaces."

7. "Sweat furnace" is defined at 40 C.F.R. § 63.1503 as "a furnace used exclusively to reclaim aluminum from scrap that contains substantial quantities of iron by using heat to separate the low-melting point aluminum from the scrap while the higher melting point iron remains in solid form."

8. The NESHAP, at 40 C.F.R. § 1501(a), states that the owner or operator of an existing affected source must comply with the requirements of Subpart RRR by March 24, 2003.

9. The NESHAP, at 40 C.F.R. § 1505(f), provides that the owner or operator of a sweat furnace at a secondary aluminum production facility must not discharge or cause to be discharged into the atmosphere emissions in excess of 0.80 nanograms of dioxins/furans TEQ per dry standard cubic meter ( $3.5 \times 10^{-10}$  grams per dry standard cubic foot) at 11 percent oxygen. However, 40 C.F.R. § 1505(f)(1) provides that the owner or operator is not required to conduct a performance test to demonstrate compliance with this dioxin/furan emission standard, provided that on and after the compliance date of this rule, the owner or operator operates and maintains an afterburner with a design residence time of 0.8 seconds or greater and an operating temperature of

1600 degrees Fahrenheit or greater.

10. The NESHAP, at 40 C.F.R. § 1506(a)(2) provides that the owner or operator of an existing sweat furnace that meets the specifications of 40 C.F.R. § 1505(f)(1) must operate the sweat furnace and control equipment according to the requirements of this section on or after the compliance date of this rule. Under 40 C.F.R. § 1506(h), the owner or operator of a sweat furnace with emissions controlled by an afterburners must maintain the 3-hour block average operating temperature of the afterburner at or above: (i) the average temperature established during the performance test, or (ii) 1600 degrees Fahrenheit if a performance test was not conducted, and the afterburner meets the specifications of 40 C.F.R. § 1505(f)(1).

11. The NESHAP, at 40 C.F.R. § 63.1515(b), requires the owner or operator of an existing affected source to submit a notification of compliance status report within 60 days after March 24, 2003.

12. The NESHAP, at 40 C.F.R. § 63.1510(b), requires the owner or operator of an affected source or emission unit to prepare and implement an Operation, Maintenance, and Monitoring (OM&M) Plan.

13. The NESHAP, at 40 C.F.R. § 63.1510(g), requires the owner or operator of an affected source using an afterburner to comply with the requirements of Subpart RRR to install, calibrate, maintain, and operate a device to continuously monitor and record operating temperature of the afterburner.

14. The Administrator of U.S. EPA (the Administrator) may

assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for NESHAP violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2004).

15. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

16. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

#### **General Allegations**

17. RSI has owned and operated an aluminum processing facility at 6560 Juniata Avenue, Cleveland, Ohio ("Facility") during the period of 2003 to the present.

18. RSI's Facility has a "secondary aluminum production facility" as defined in 40 C.F.R. § 63.1503.

19. The Facility's secondary aluminum production facility is an area source for HAP as defined in 40 C.F.R. § 63.2.

20. The NESHAP for Secondary Aluminum Production, at 40 C.F.R. Subpart RRR, applies to the secondary aluminum production facility at the Facility.

21. At the Facility's secondary aluminum production facility, RSI owns and operates a "sweat furnace" ("Furnace"), as that term is defined under 40 C.F.R. § 63.1503.

22. The Facility's Furnace is an "affected source" subject to the NESHAP Subpart RRR requirements pertaining to dioxin and furan emissions and associated operating, monitoring, reporting and recordkeeping requirements.

23. The Facility's Furnace was constructed prior to February 11, 1999 and thus is an existing affected source under the NESHAP.

24. RSI operates an afterburner to comply with the Subpart RRR NESHAP's dioxin and furan emission control requirements pertaining to the Facility's Furnace.

25. RSI operates an afterburner to control its Furnace emissions to meet the specifications of 40 C.F.R. § 63.1505(f)(1).

26. The Facility has not conducted a performance test of its Furnace and associated control device to establish compliance with the dioxin/furan emission standard under 40 C.F.R. § 1505(f).

#### **Count I**

27. Complainant incorporates paragraphs 1 through 26 of this complaint, as if set forth in this paragraph.

28. The subpart RRR NESHAP at 40 C.F.R.

§63.1510(g)(1) specifies that for those owners or operators of an affected source using an afterburner to comply with the NESHAP subpart RRR requirements, the owner or operator must install, calibrate, maintain, and operate a device to continuously monitor and record the operating temperature of the afterburner consistent with the requirements of 40 C.F.R. §63.1510(g)(2), and requirements for continuous monitoring systems under 40 C.F.R. part 63, subpart A.

29. By March 24, 2003, RSI was required by the subpart RRR NESHAP to install, calibrate, maintain, and operate a device to continuously monitor and record operating temperature of its Furnace's afterburner consistent with the requirements of 40 C.F.R. §63.1510(g)(2), and requirements for continuous monitoring systems under 40 C.F.R. part 63, subpart A.

30. RSI did not install a monitoring system or operating temperature recording device consistent with the requirements of 40 C.F.R. §63.1510(g)(2), and 40 C.F.R. part 63, subpart A for its Furnace's afterburner until after August 1, 2004.

31. RSI did not install any device to continuously monitor and record operating temperature of its Facility's afterburner until after August 1, 2004.

32. RSI did not install a monitoring system or operating temperature recorder consistent with the requirements of 40 C.F.R. §63.1510(g)(2), and 40 C.F.R. part 63, subpart A for more than 16 months past March 24, 2003.

33. Failure to install, maintain and operate a device that continuously monitors and records the afterburner operating

temperature constitutes a violation of the requirements established under 40 C.F.R. §63.1510(g) and Section 112 of the Clean Air Act, 42 U.S.C. §7412.

**Count II**

34. Complainant incorporates paragraphs 1 through 26 of this Complaint, as if set forth in this paragraph.

35. The subpart RRR NESHAP, at 40 C.F.R. § 63.1510(b), requires the owner or operator of an affected source or emission unit to prepare and implement an OM&M Plan which contains the information required under § 63.1510(b). The owner or operator of an existing affected source must submit the OM&M Plan to the responsible permitting authority no later than the compliance date established by §63.1501(a).

36. The responsible permitting authority under the NESHAP is the Ohio EPA.

37. By March 24, 2003, RSI was required to develop and submit for approval a written Operation, Maintenance & Monitoring (OM&M) Plan.

38. RSI did not submit to Ohio EPA any OM&M plan until after September 1, 2004.

39. RSI did not submit to Ohio EPA an OM&M plan which met the requirements of § 63.1510(b) until after September 1, 2004.

40. RSI failed to submit an OM&M plan to Ohio EPA for more than 17 months past the date specified in the regulations.

41. Late submission of the OM&M Plan constitutes a violation of the requirements established under 40 C.F.R. §63.1510(b) and Section 112 of the Clean Air Act, 42 U.S.C.



§7412.

**Count III**

42. Complainant incorporates paragraphs 1 through 26 of this Complaint, as if set forth in this paragraph.

43. The subpart RRR NESHAP, at 40 C.F.R. §63.1510 (g)(ii), requires that an owner or operator of an affected source using an afterburner to comply with the NESHAP must record temperature in 15-minutes block averages and determine and record the average temperature for each 3-hour block period.

44. According to the NESHAP, at 40 C.F.R. § 63.1517(a)(1), the owner or operator must retain each record required under the subpart RRR NESHAP for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. The most recent 2 years of records must be retained at the facility. The remaining 3 years of records may be retained off site.

45. RSI was required to comply with the afterburner temperature operating recordkeeping requirements of 40 C.F.R. §§ 63.1510(g)(ii), and 63.1517(a)(1) on and after March 24, 2003. 40 C.F.R. § 63.1501(a).

46. RSI failed to keep records of 15-minute average and 3-hour block average operating temperatures for the Facility's sweat furnace afterburner for the period of March 24, 2003 until after August 1, 2004.

47. RSI failed to keep records of 15-minute average and 3-hour block average operating temperatures for the Facility's sweat furnace afterburner for a period of at least 16 months

after March 24, 2003.

48. Failure to maintain adequate records required by the NESHAP is a violation of 40 C.F.R. §63.1517(a)(1) and Section 112 of the Clean Air Act, 42 U.S.C. §7412.

#### **Count IV**

49. Complainant incorporates paragraphs 1 through 26 of this Complaint, as if set forth in this paragraph.

50. The subpart RRR NESHAP, at 40 C.F.R. § 63.1515(b), requires the owner or operator of an existing affected source to submit a notification of compliance status report within 60 days after March 24, 2003.

51. RSI failed to submit a notification of compliance status report within 60 days after March 24, 2003.

52. Failure to submit a notification of compliance status report is a violation of 40 C.F.R. § 63.1515(b) and Section 112 of the Clean Air Act, 42 U.S.C. §7412.

#### **Count V**

53. Complainant incorporates paragraphs 1 through 26 of this Complaint, as if set forth in this paragraph.

54. The subpart RRR NESHAP, at 40 C.F.R. § 63.1505(f)(1), states that the owner or operator of a "sweat furnace" is not required to conduct a performance test to demonstrate compliance with the emission standard of paragraph (f)(2) of this section, provided that on and after the compliance date of this rule, the owner or operator operates and maintains an afterburner with a design residence time of 0.8 seconds or greater and an operating temperature of 1600 degrees Fahrenheit or greater.

55. The subpart RRR NESHAP, at 40 C.F.R. § 63.1506(a)(2) provides that the owner or operator of an existing sweat furnace that meets the specifications of 40 C.F.R. § 63.1505(f)(1) must operate the sweat furnace and control equipment according to the requirements of § 63.1506 on or after the compliance date of this rule. Under 40 C.F.R. § 63.1506(h), the owner or operator of a sweat furnace with emissions controlled by an afterburner must maintain the 3-hour block average operating temperature of the afterburner at or above 1600 degrees Fahrenheit if a performance test was not conducted, and the afterburner meets the specifications of 40 C.F.R. § 63.1505(f)(1).

56. During the months of September and October 2004, RSI failed to consistently maintain its Furnace's afterburner emission control device at a minimum operating temperature of 1,600 degrees Fahrenheit.

57. Operating the Furnace's afterburner below the minimum operating temperature of 1,600 degrees Fahrenheit is a violation of 40 C.F.R. §§ 63.1505(f)(1), 63.1506(a)(2), and 63.1506(h), and Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

#### **Proposed Civil Penalty**

58. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

59. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$119,822. Complainant evaluated

the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). The evaluation also considered the September 21, 2004, U.S. EPA policy memorandum "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004)." Enclosed with this complaint is a copy of the penalty policy.

60. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

#### **Rules Governing This Proceeding**

61. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules) at 40 C.F.R. Part 22 (2004) govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

#### **Filing and Service of Documents**

62. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

63. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Mark Palermo to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mark Palermo at (312) 886-6082. Mark Palermo's address is:

Mark Palermo (C-14J)  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

**Penalty Payment**

64. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Mark Palermo and to:

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

**Opportunity to Request a Hearing**

65. The Administrator must provide an opportunity to

request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 66 through 71 below.

**Answer**

66. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 62, above, and must serve copies of the written answer on the other parties.

67. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

68. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that

it has no knowledge of a particular factual allegation, the allegation is deemed denied.

69. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

70. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 65 above.

71. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

#### **Settlement Conference**

72. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Mark Palermo at the address or phone number specified in paragraph 63, above.

73. Respondent's request for an informal settlement

conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.


**Continuing Obligation to Comply**

74. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

9/27/2005  
Date



Stephen Rothblatt, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

CAA-05- 2005 0052  




In the Matter of Remelt Services, Incorporated  
Docket No.

CAA-05- 2005

0052

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number [ ] to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* at 40 C.F.R. Part 22, and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

on the 28<sup>th</sup> day of September, 2005.

U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
REGION V

05 SEP 28 10:53

RECEIVED  
REGIONAL HEARING  
CLERK  
SEP 28 2005

Loretta Shaffer  
Loretta Shaffer, Secretary  
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0005 9025 6596